

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDWARD L. ZAK

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social security,

Defendant.

Case No. C03-5187 FDB

ORDER ON ATTORNEY FEES

This matter comes before the Court on Plaintiff's motion for authorization of attorney fees under 42 U.S.C. § 406(b). This court has jurisdiction to award attorney fees for work before this court under 42 U.S.C. § 406(b). Straw v. Bowen, 866 F.2d 1167 (9th Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519 (9th Cir. 1987).

Previously, this Court awarded Plaintiff's counsel \$4,511.80 pursuant to the Equal Access to Justice Act (EAJA). An administrative level fee of \$5,300.00 was previously awarded. Plaintiff's counsel now petitions for a gross fee of \$15,259.00. Plaintiff has subtracted from 25% of the past due benefits the amount awarded pursuant to the EAJA and at the administrative level, leaving a net

1 fee of \$5,447.20. The Commissioner has filed a response to Plaintiff's motion without objection to
2 the fee request.

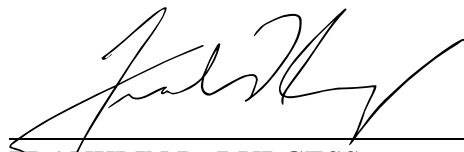
3 Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld
4 from the past-due benefits. This 25% limit applies to the total of 42 U.S.C. § 406(a) and 406(b) fees
5 combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4th Cir. 1982); Webb v.
6 Richardson, 472 F.2d 529, 536 (6th Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5th Cir.
7 1970).

8 ACCORDINGLY,

9 IT IS ORDERED:

10 Plaintiff's Motion for an Award of Attorney's Fees [DKT #24] is **GRANTED**. Plaintiff is
11 awarded 42 U.S.C. § 406(b) attorney fees in the sum of \$5,447.20 minus the § 406(d) administrative
12 assessment.

13
14 DATED this 28th day of February, 2006.

15
16
17
18
19 
20 FRANKLIN D. BURGESS
21 UNITED STATES DISTRICT JUDGE
22
23
24
25